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Prime Envelope & Graphics, Inc. and Printing Specialties and Paper Products Union, Local 447, GCIU, AFL-CIO. Case 22-CA-26086

April 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on October 31, 2003, the General Counsel issued the complaint on January 30, 2004, against Prime Envelope & Graphics, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On April 1, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On April 7, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days of service of the complaint, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 19, 2004, notified the Respondent that unless an answer was received by February 26, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Carlstadt, New Jersey, has been engaged in the manufacture, printing, and production of stationary, office supplies, and envelopes.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operation described above, sold and shipped from its Carlstadt facility goods valued in excess of \$50,000 directly to customers located outside the State of New Jersey, and purchased and received goods and services valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Printing Specialties and Paper Products Union, Local 447, GCIU, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Employer including handlers of cases, rolls, bundles, cartons, etcetera; packers; order fillers; order pickers; stockmen; shipping and receiving clerks; cutters; rotary cutters; slitters; sheeters and rewinders; sealers and wrappers of cut stock; operators; pressmen and platemaker/strippers but excluding all office clerical employees, guards and supervisors as defined in the Act.

Since about December 1961, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2000, to April 30, 2003.

At all material times since December 1961, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Beginning on about May 15, 2003, the Respondent has failed to make contributions to the Union's Pension and Annuity Fund for the month of March 2003, and continuing for each month thereafter until the present time.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to make contributions to the Union's Pension and Annuity Fund for the month of March 2003, and continuing for each month thereafter until the present time, we shall order the Respondent to make all such delinquent benefit fund payments, including any additional amounts applicable to such payments as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).¹ We shall also order the Respondent to reimburse the unit employees for any expenses ensuing from its failure to make contributions to the Pension and Annuity Fund, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Prime Envelope & Graphics, Inc., Carlstadt, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Printing Specialties and Paper Products Union, Local 447, GCIU, AFL-CIO, by unilaterally failing to make contributions to the Union's Pension and Annuity Funds on behalf of unit employees. The appropriate unit consists of:

All employees of the Employer including handlers of cases, rolls, bundles, cartons, etcetera; packers; order fillers; order pickers; stockmen; shipping and receiving clerks; cutters; rotary cutters; slitters; sheeters and rewinders; sealers and wrappers of cut stock; operators; pressmen and platemaker/strippers but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all required Pension and Annuity Fund payments that have not been made for the month of March 2003, and each month thereafter, and reimburse unit employees for any expenses resulting from its unlawful failure to make these payments, with interest, as set forth in the remedy section of this Decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Carlstadt, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the

¹ To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2004

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| Robert J. Battista, | Chairman |
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| Dennis P. Walsh, | Member |
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| Ronald Meisburg, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit or protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Printing Specialties and Paper Products Union, Local 447, GCIU, AFL-CIO, by unilaterally failing to make contributions to the Union's Pension and Annuity Fund on behalf of unit employees. The appropriate unit consists of:

All of our employees including handlers of cases, rolls, bundles, cartons, etcetera; packers; order fillers; order pickers; stockmen; shipping and receiving clerks; cutters; rotary cutters; slitters; sheeters and rewinders; sealers and wrappers of cut stock; operators; pressmen and platemaker/strippers but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all required Pension and Annuity Fund payments that have not been made for the month of March 2003 and each month thereafter, and reimburse unit employees for any expenses resulting from our unlawful failure to make these payments, with interest.

PRIME ENVELOPE & GRAPHICS, INC.